

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 5, 2001

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, June 7, 2001 at 1:30 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jerry Michaelis, Acting Chair; James Barfield; Elizabeth Bishop; Kerry Coulter; Bud Hentzen; Bill Johnson; Don Anderson; Ron Marnell; Ray Warren; Frank Garofalo; John W. McKay, Jr.; Harold Warner and David Wells. Dorman Blake was not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Bill Longnecker, Senior Planner; and Valerie Robinson, Recording Secretary.

1. **Approval of MAPC meeting minutes for June 7, 2001.**

MICHAELIS "I would like to do the approval of the minutes. If anyone has any changes please give them to the secretary."

Don Anderson in at 1:05.

MOTION: That the Metropolitan Area Planning Commission approved the minutes for July 5, 2001, as amended.

MCKAY moved, **HENTZEN** seconded the motion, and it carried unanimously (9-0)

Bill Johnson and Ray Warren in at 1:08.

2. Joe Lang, First Asst. City Attorney: **Presentation on conflict of interest, open meetings law, and other procedural issues of interest to MAPC**

MICHAELIS "Item #2, I had asked for the benefit of the new members on the Planning Commission that generally the City Attorney's Office would come and talk to us in reference to what may be exparte, conflicts of interests and that sort of thing, and to give a refresher to all of us. I think most of you have the bylaws. They are broken into four different parts. I asked Mr. Lang to take each one and give us a layman's term of what it actually means. Mr. Lang."

JOE LANG, City Attorney "I would like to take this opportunity to talk to you a little bit and more importantly, maybe answer some questions on the issues that the Chairman has indicated. First, I would like to welcome new members to the Commission; the Law Department is here if you ever need us to show up, we always can come down here. The handout I have given you addresses one issue on conflict of interests. I will talk about some specific pages of that and some of the things not in the handout. We try to spend a little more time and effort and the staff and Commission has certainly been sensitive to the fact that among all the appointive boards of the City this is one of those which has an important function, in that it has statutory function. You have duties beyond just advising the City Council, and in this case County Commission on areas of interest but you actually have statutory duties that you must perform. Your decisions are amongst those that we get into litigations on more frequently than with other boards as well. It is important for you to continually keeping in mind and being updated on your role as a public official and your duties of this Commission. All these issues that we talk about center around the concept of due process. The hearings that you give people, that they are full, fair, open and impractical. Due process requires notice and hearings, which you give. Individuals appearing before you are entitled to an impartial and fair hearing. Your function of course is to listen to the evidence and to make a decision in an impartial and uninterested manner. Most of these black lined issues we can deal with pretty easily, but when we get into subjective matters as to whether you are being fair and impartial, this opens up the debate and we at least want to make sure that you have had an opportunity to indicate your fairness and impartiality. We are going to go through the legal requirements of State law on conflict of interest which are a violation of these is a Class B misdemeanor and then add to that your unique and additional provisions in your bylaws. Looking at your bylaws, I think your Chairman said you had them, I also reprinted them on page 3 of my handout the additional considerations. I will go over them one-by-one. MAPC Commissioners may not participate or vote on a matter if any of these four items exist. Number one is the one I need to spend the most time on because number one is a State law, and then we will skip back to the first page to go over what a substantial interest is.

Under State law, until there has been a disclosure of Substantial Interest you cannot act upon a matter affecting a business in which you have a substantial interest. Your bylaws say, even if you have made this disclosure, you cannot participate. Therefore, your bylaws are much stricter than the State law in this area. It is important for you to know matters in which you have a substantial interest. Substantial interest is an interest in a business, first of all looking at that definition; it is any kind of a business, entity, corporation, and/or partnership. It also includes ownership of land for income. This would be property that you lease, or otherwise use for income purposes; it does not include your personal residence. You have a substantial interest in a business if; these are summarized and on the last page I put the actual statutory provisions, but just to summarize these rule of thumbs. If you have a \$5,000 or a 5% interest in a business or if you have taxable income of \$2,000 or more in a business, these first two items will cover most of your business by which you are employed or own. Third is a gift of \$500 or more from a business in the proceeding twelve (12) months. This means something that you get either in cash or tangible benefits such as corporate jet trips, golf game, whatever, if they would be the equivalent value of \$500 it is a gift which you have been given without reasonable and valuable consideration, and you suddenly have a substantial interest in that business. The next one is if you are an officer of any kind of business, you have a substantial interest in that business, note and we will talk about this several times. Note this does not include not-for-profit, it does not include 501(c) organizations or governmental entities. So if you are an Officer or Director of a not-for-profit or governmental entity that does not count on your prohibition of participation. The last one, fees and commissions, which is one often hardest for people to figure out is: if you are paid by a business which has a client, which has given; or share of the fees or commissions of that client are \$2,000 or more a year then you have a substantial interest in that client. This has had to have been interpreted a number of times and some specific examples that have been ruled upon. If you own a donut business, you do not have a substantial interest in all the retailers who buy wholesale donuts from you. It is not that type of retail, wholesale business, but

rather if you are a professional, or providing a service through a business in which clients pay what your share would be \$2,000, then in those clients you do have a substantial interest.

What must you do if you have a substantial interest? Normally you have two options; you have the option to disclose this on a disclosure of interest form. It is then publicly available for elected officials and for other boards; they can then go ahead and act if they have disclosed this. Your particular board by-laws say: if you have a substantial interest you cannot participate in the matter. So we will leave it up to you whether or not you actually file these, disclosure forms ahead of time or if you want to announce at a particular meeting, or a particular agenda items that you have a substantial interest and are not participating. You have the option whether or not to fill out the form. I will add however that you must disclose even though it is not a disbaring substantial interest, you must disclose if you are an officer, director, and partner of a 501(c) organization that has an application before you. If a particular charitable organization or non-profit has a zoning application or something like that and you are an officer in that organization you do not have a legal substantial interest that you are prohibited from acting on that matter, but you must disclose it before you act. Have I confused anybody at this point or do you have any questions at this point?"

MICHAELIS "I would like to ask one question in reference to what we were talking about as far as any business because today we are getting a lot more companies that are owned by another company. Unless for example; if we are dealing with a case that is a subsidiary of another company of which you are or do have a substantial interest, does that eliminate you from the one we are actually talking about?"

LANG "I think you are going to have to get down to the analysis of whether you have a \$5,000 or 5% interest in that subsidiary business that might be before you."

MICHAELIS "So as long as you don't in that particular business and do in the parent, you are still okay."

LANG "Right, legally you are still okay. You have to look at how the funds are going and the ownership interest; sometimes it maybe easier to declare a conflict than to try to figure it out if it is on the line. Also, note under both at least your bylaws and the State laws as well we are talking about matters that you are dealing with usually in a quasi-judicial matter. If you are working on zoning text, legislative matters and you are considering changes to the zoning code to regulate car lots or tattooing and you own a car lot or a tattoo business, you are not prohibited from participating in that because you are not dealing with a specific identified business. Keep in your mind when Comprehensive Plan, CIP, Zoning text amendments, those things come before you, you can do a lot of things relative to that, that you can not do on a quasi-judicial matter, that would be a zoning or Subdivision case. Another question that often comes up is "what about my brother in-law that is appearing before me here today?" The legal prohibition for both State law and bylaws applies only to yourself and your spouse. Therefore, you consider yourself and your spouse's ownership or position and no other family, or relationship applies. This still leaves the matter of appearances. I will deal with that again sometime if your brother in-law is here. It is not the same type of things like what I have been reading about as one of the judge's whose wife's niece in-law or something like that, was a related witness in a case and the judge took himself out of the case because of appearances not because of any legal requirement. You sometimes have issues like that as well and we will address that. That is the first area from which you are prohibited from acting on matters of which you have a substantial interest by State law.

The second one looking at the four in your bylaws is where the member has expressed an individual opinion on the determination of a quasi-judicial matter that is coming before you and this is basic due process. If you have expressed an opinion on something you have prejudged it, and you are not giving the applicants or the protestor coming before you a fair and impartial hearing. You should avoid expressing your opinion on quasi-judicial matters; but if you have, then you cannot participate. That is why in the past we have said; people who are both on the Planning Commission, the BZA, and the old CPO, now currently the DABs, they cannot participate in both places. When you participate at the DABs, you are expressing your opinion on something before it has come to the MAPC. Again, we are only talking about quasi-judicial matters, zoning applications and so forth. Again, this does not cover legislative matters such as Zoning text, Comprehensive Plan, you can legally talk about that all you want to and that is a legislative or a policy making decision.

The third area in which you may not participate is if you own property or are a prospective purchaser of property that is included in an application. This is usually pretty clear. Sometimes you may be the only person to know that you are the prospective purchaser so you will have to evaluate that as to how far along you are on being a prospective purchaser, so if you are on the application under any of those relationships you should not be participating.

Finally, if you own property in the statutory notification area, you may not participate. Now in this case it does include your personal residence, it could be property that you own for a moneymaking activity as well as your personal residence so, any ownership in the statutory notification area you should not be participating. Finally, there are those four and then there is the introductory statement in Section 10 of the bylaws there then you should not appear before the MAPC to represent other people. If you are in that kind of business, you cannot represent other people if it is your own property that is being re-zoned obviously you have the right as any citizen to get up here and make your case for your business or residence. However, unless you have already been precluded from participating for one of those reasons, you should not appear before the Commission.

Now it has long been the recommendation of the Law Department to both the City Council and to the various boards that even where you do not have a legal prohibition on participating you need to evaluate on a case-by-case basis whether you should abstain because of the appearance of impropriety. This has to do with public perception of fairness. Again, this is your own case-by-case evaluation as to whether you think either; you have become biased in a matter or you have the appearance, or you appear biased because of some involvement. The City Council rules as well as your own by-laws say you cannot abstain except when you have a conflict. Any silence in voting is recorded as an affirmative vote. You can't sit there and say this case is too tough for me or I don't know enough about the case; I don't want to participate. You are not allowed to do that. You have to vote on every matter before you. However, you should affirmatively announce that you are abstaining if you have a conflict or some matter that you are so intimately involved in that it would certainly have the appearances of a conflict. For conflict matters, any questions or any further clarification that I can provide to you?"

GAROFALO " I have a question, I guess it is a question. If a member abstains or wishes to abstain, is it best in your opinion that that member leave the room during the discussion?"

LANG "It is not required. It is a personal matter. It should not be in here trying to influence people, and if someone feels intimidated by your glares then maybe you ought to leave, but there is not requirement that a person leave.

I am not sure of how much time you wished for me to take, I can briefly touch on exparte contact and also the open meeting contact."

KROUT "Please."

LANG "Exparte matters are closely related to this conflict of interest in your bylaws which are also a due process issue in 10(d). It says; prior to any motion on any application a Commissioner shall disclose the nature of any exparte contacts and of any information contained in those contacts that may have a bearing on there decisions. These are matters where someone has come and talked to you or you have personally gone out and inquired information about an application. Exparte means that you got this information from one side, the other side, whatever that other side might be was not present when you got that information, exparte, and so you have an obligation to disclose that. Again, it is due process, so that everyone here, the other Commissioners as well as the public and applicant, knows what kind of information you are basing your information your opinion. If this information has not influenced you it is helpful to state that as well, that so and so came and said I should vote for this matter for this and this reason but my mind is still open. Let us know if that has not affected your opinion. On the other hand, say if said I am very disturbed about this information and I would like a little more information or background to balance it out, just to give people a change to balance any exparte information you might have. That is exparte."

KROUT "The bylaws say prior to any motion on the application, in order to ensure due process we should really ask the Commisssioners to disclose the contexts before the hearing so that if the applicant is here or the public is here that they can then have that information and that can be something that they can respond to."

LANG "That is certainly the best and the whole purpose of this. That if you close an exparte contact it gives the people coming up here then a chance to balance that out to disabuse you of any wrong information that you might have. If you don't get it done, certainly before the vote announce it. However, Marvin is correct, it is certainly best to get this thrown out or get this put out publicly. There have been no case's in Kansas where a zoning decision has been overturned purely because of an exparte contacts. But is only because the court has looked at these on a case-by-case basis's and not analyzed them and determined in all the cases that the decision maker was not bias as a result of the exparte information or the decision had a change to get a balance of information. That is one of those always hanging out there if you do not take care of this; it is always a due process challenge that can be raised by someone who is unhappy by the decision that comes out on a case. Just very briefly, because we have some new people here..."

BISHOP "That is okay Joe, I wanted to ask what was involved with disclosure?"

LANG "The disclosure forms."

BISHOP "No I mean the disclosure of an exparte, an exparte contact. What is supposed to be covered?"

LANG " I just think; state the nature of it; "that some people came to me and talked about this case, asking me to oppose it or telling me about the impact of it on the neighborhood or something in the neighborhood, my mind is still open". "I went out and drove by this property on my way to the meeting here today or something like that". All those things are things that should be disclosed."

MICHAELIS "Are there any further questions?"

WARNER "That last statement, I would think we had an obligation to go out quite often to observe physically some of these cases. I don't consider that exparte at all. We have not talked to anybody, we haven't done anything, we haven't inquired or anything what-so-ever."

LANG "No, certainly there is nothing wrong with doing it. I think it probably helps you make a better decision."

WARNER "It would be assumed, rather than being a necessity of disclosure that we would do that."

LANG "I still think it is not required, but helpful when you announce that. I'm speaking of a perfect world and you all have to deal with the reality of your agenda here each day."

MICHAELIS "I think the reality of that is if we did that we would be here twice as long as we already are. I would leave it, I guess my recommendation would leave it more to if somebody contacted you and expressly talked to you about a particular case then to mention that. Nevertheless, to mention that, just going out to look at it, I think is not necessary. Mr. Hentzen."

HENTZEN "I wanted to ask about that and when he mentioned drive by and look at it; I want to announce that I have been guilty of that since I have been on this Commission. I go by and look at property to get a sense of it. I just think that is ridiculous. Let me ask, do your rules apply to all of us Commissioners, does it apply to the Planning Director since he is the secretary of this board?"

LANG "I will address the first comment. The rules I have talked about apply to you as the decision makers. He has his own set of rules that apply to him as an employee. He cannot, or any of the employees here, do not have the four limited prohibitions that you do. They do all have the substantial prohibitions. So, as an employee they cannot act or pass on a matter on which they have a substantial interest without disclosure That is any employee in the city, on any kind of matter, if they have a substantial interest on any matter they can not act or pass on that matter without disclosure of their interest.

HENTZEN "I think your presentation on the conflict of interest was very helpful and it is really right, but let me ask; do the rules of exparte apply to the City or County Commissioners."

LANG "Yes, when they are acting on zoning matters."

HENTZEN "Have you ever heard them announce an exparte contact?"

LANG "Yes."

HENTZEN "Well I can tell you this on my eight years on the County Commission I have never heard one. I want to display an attitude that if I as an American citizen cannot go look at something and talk to a citizen, even while I'm there, why didn't you tell me that before I raised my hand and serve. Isn't that some kind of conflict with the right of assembling?"

LANG "There is a conflict there Mr. Hentzen. Back on the drive by, I probably should clarify that into context a little bit. What we are interested in is, if you have seen something that influences your decision differently than what you have heard in this room, if you see something on a property that says, irrespectively what I'm hearing from these people, what I have seen there is affecting my decision, then that's the kind of thing that should be disclosed. However, on the contact, we recognize, particularly Council members, I mean they are out there, they are political people, they have constituents that have a right to talk to them and they want to hear from their constituents. We don't say don't talk to them; it is just we encourage them to disclose any information on any quasi-judicial matter. They don't all do a good job of disclosing all their contacts. Nevertheless, definitely anything that is going to affect the decisions or is going to be perceived as affecting the decisions. There was a couple of recent zoning cases that we have had two different City Council members who have been drilled extensively because of their contacts in the community that did not get reported to the rest of the Council. It is something that they continually need to be sensitized to. The citizens have the right to approach and talk to them, but the elected officials, as you, still have a constitutional duty to give the people appearing before you at the hearing a fair hearing. So you can't close your mind to what you are hearing until you have heard everything. It is a gray area, which is hard to set down hard binding rules. We rely on peoples good faith and intent and their lack of malicious intent on reaching these decisions."

HENTZEN "Other than the recent cases, has this been tested in the courts?"

LANG "Yes."

HENTZEN "In the Kansas courts?"

LANG "There have been only four Kansas appellate cases that have dealt with exparte contact, or contact in zoning matters. As I said, none have been overturned, because of the quasi-judicial, or the exparte contacts, or because the court found that those exparte contacts did not affect the decisions, but it is always open for challenge."

MICHAELIS "Any further questions? Thank you Mr. Lang."

LANG "Thank you and any time questions come up, we are always willing to come down here; or individual questions can be sent up to our office."

MICHAELIS "Would you touch just a little on open meetings?"

LANG "Just very quickly, open meetings; which is another sensitive area. It is a little different because you are public officials and just for your information both the Attorney General and the District Attorney were given new powers last year, new investigative powers in open records and open meetings matters. They have been out there a lot more aggressively looking and investigating these. Fortunately, City staff and City officials have been pretty well sensitized to know what to do and we have not had any problems yet. However, open meeting, as you are aware means open, people come in, sit, and listen. A meeting covered by the open acts, covers three elements, first interactive communications, either in a live meeting, telephone conference call, chat room on the internet or wherever; second the majority of a quorum, and third for the purpose of discussing the business and affairs of this body. When you have those three things exist, you have a meeting that you must give notice to the public and allow them to participate. This includes workshops, informal sessions, training; it does not include social affairs, again where you are not discussing the business of the body. However, if the majority of a quorum for this body, being 14 members, a quorum is eight, five is the majority of a quorum. Therefore, if five of you are talking about zoning matters over coffee somewhere, you are violating the Opens Meeting Act. Warn you of one other thing, this applies also to your committees and so for the subdivisions and Advanced Plans with seven members, and four is a quorum, three is a majority of a quorum. If you are on Advanced Plans and talking about an issue involving advance plans outside of the committee meeting, no more than two of you can talk. If three of you are together chatting about this somewhere, you are violating the Opens Meeting Act law. Again, by becoming public officials, you have extra burdens put on you and you just need to keep in the back of your mind about where you are talking about the business of the body. As far as your official meeting, committees and MAPC, the staff takes care of the notices and that sort of thing and you don't need to be concerned about that. Just be careful of your informal gatherings that you don't find yourself in violation. I will tell you the DA recently investigated another board where they thought some board members were standing around chatting after the meeting. There was not a majority of a quorum, but they were certainly looking to see if there might have been."

MICHAELIS "For the benefit, we have a couple of new members here today who are officially able to participate now and for everybody; if you do not have a copy of the bylaws, please get with Marvin's office and get a copy, make sure you look at it every now and then. Officially, I would like to welcome Mr. Wells and Mr. Anderson and enjoy."

MICHAELIS "Are there any items on the Subdivision agenda that need to be pulled? We need to pull 3/1 for two weeks. Okay. Is there anyone in the audience wishing to speak on any of the Subdivision items? In that case, we can take all of the items in one motion."

MOTION: That the Metropolitan Area Planning Commission defer item 3/1 for two weeks.

JOHNSON moved, **COULTER** seconded the motion, and it carried unanimously (13-0) Deferred.

3. Subdivision Committee items 3/2, 3/4, 3/6, 3/8 and 3/10 were approved subject to the Subdivision Committee recommendations. WARREN moved, MARNELL seconded the motion, and it carried unanimously (13-0)
- 3.1 **SUB2000-88 – Final Plat of RIO VISTA ESTATES FOURTH ADDITION, located on the northwest corner of 61ST Street North and Meridian Avenue.**
 - A. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. Upon annexation, the property will be zoned SF-6, Single-Family Residential.
 - B. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the **Health Department** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **Standard soil testing is required. A drainage plan is requested.**
 - C. The Applicant shall guarantee the extension of City water to serve the lots being platted.
 - D. **City Engineering** needs to comment on the need for any guarantees or easements. **No additional guarantees are required.**
 - E. **City Engineering** needs to indicate if petitions for future extensions of sewer services need to be provided. **A petition for future extension of sanitary sewer services is requested.**
 - F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - G. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A drainage guarantee is required. Utility and drainage easements need to be labeled.**
 - H. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
 - I. The Applicant shall guarantee the paving of the proposed interior streets in addition to paved access of 61st St. North between the nearest paved segment and the entrance to the subdivision.
 - J. **City Fire Department** needs to comment on the street names. **The street names are acceptable.**
 - K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. **Prior to the MAPC meeting, the Applicant shall meet with County Engineering to review maintenance of the reserve and determine the need for a restrictive covenant.**
 - L. For those reserves being platted for floodway purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the floodway reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body. **Prior to the MAPC meeting, the Applicant shall meet with County Engineering to review maintenance of the reserve and determine the need for a restrictive covenant.**
 - M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
 - N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
 - O. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
 - P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
 - Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery and the tentative mailbox locations can be determined.
 - R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3-2. SUB2001-32 – Final Plat of BRENTWOOD SOUTH ADDITION, located on the northeast corner of Webb Road and Pawnee.

- A. As this site is adjacent to Wichita's city limits, the Applicant shall submit a request for annexation. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-6, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the City for service through the Four Mile Creek sanitary sewer system.
- C. The Applicant shall guarantee the extension of City water to serve the lots being platted.
- D. City Engineering needs to comment on the need for any other guarantees or easements. **No additional easements are required.**
- E. City/County Engineering needs to comment on the status of the applicant's drainage plan. **City Engineering has required a drainage guarantee. Minimum pad elevations need to be platted for the lots abutting the lake.**
- F. County Engineering requests, Applicant's comments on how traffic will be handled on Pawnee. **County Engineering has required right and left turn bays along Pawnee.**
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. This covenant shall also provide for the Homeowner's Association to maintain the parking strip located between the site's south property line and driving surface for Pawnee.
- H. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. For the Reserves indicated as platted for swimming pools, a site plan shall be submitted with the final plat tracing, for review and approval by the Director of Planning. The site plan shall provide the information indicated in the Subdivision Regulations. Otherwise, a Conditional Use and public hearing will be needed in the future.
- J. The Applicant shall guarantee the paving of the proposed interior streets to the urban street standard. Sidewalks shall also be provided along one side of all through, non-cul-de-sac streets.
- K. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. Lots 4 and 5, Block 1, and Lots 2 and 3, Block 5, exceed the maximum lot width to lot depth ratio of 2.5 to 1. **A modification has been approved.**
- M. The County Fire Department needs to comment on the plat's street names. **Stoneybrook along the north portion of the plat needs to be revised to Clark.**
- N. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- O. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this

binder and any relevant conditions found by such a review.

- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **KGE has requested additional easements.**
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3-3. SUB2000-55 – Final Plat of MAPLE SHADE ADDITION, located north of Pawnee, on the east side of Webb Road.

- A. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. Prior to this plat being scheduled for City Council review, annexation of the site will need to be completed.
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a zone change.
- C. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the City for service through the Four Mile Creek sanitary sewer system. **County Engineering requests a sanitary sewer layout.**
- D. The applicant shall guarantee the extension of City water to serve this site.
- E. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- F. **City Engineering** needs to comment on the need for any additional guarantees or easements. **An off-site drainage easement is requested unless this Addition is platted concurrently with Brentwood South Addition to the east. A drainage guarantee is required.**
- G. **City Engineering** needs to comment on the status of the applicant's drainage plan. **On-site detention will be needed on the final drainage plan.**
- H. **Traffic Engineering** needs to comment on the need for access controls. Distances should be shown for all segments of access control. The final plat shall reference the access controls in the platlor's text. **Traffic Engineering has required complete access control along Webb Road.**

The requested access control has been platted.

- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities
- J. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the

reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- K. For the Reserves indicated as platted for swimming pools, a site plan shall be submitted with the final plat tracing, for review and approval by the Director of Planning. The site plan shall provide the information indicated in the Subdivision Regulations. Otherwise, a Conditional Use and public hearing will be needed in the future.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- N. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- O. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on the south side of Mt. Vernon and Stoneybrook.
- P. The paving guarantee shall include the installation of a temporary turnaround at the terminus of Stoneybrook at the plat's east line. The temporary turnaround shall be established by separate instrument.
- Q. **City Fire Department** should comment on the plat's street names. **Stoneybrook should be revised to "Clark".**
- R. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay (referenced as P-O #83) and its special conditions for development on this property.
- S. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- AA. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **KGE has requested additional easements.**
- AA. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/4. SUB2001-63 – One-Step Final Plat of DEER LAKE ESTATES SECOND ADDITION, located south of 47th Street South, west of Oliver.

- A. The applicant shall guarantee the extension of sanitary sewer and public water to serve the lots being platted.
- B. The Applicant will need to petition to the Oaklawn Sewer District for Sanitary Sewer. The Applicant shall submit a letter from

Oaklawn indicating that any requirements for the sanitary sewer petition have been satisfied.

- C. **City Engineering** needs to comment on the need for additional guarantees or easements. **No additional guarantees are required.**
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The East 30' of Lots 8, 9, 10 and 11 needs to be platted as Drainage Reserve with the appropriate drainage reserve language specifying maintenance responsibilities ("Maintenance of the Drainage Reserve shall be the responsibility of the Deer Lake Estates Homeowners' Association until such time the governing body exercising jurisdiction elects to assume the responsibility for maintenance and improvement of the Drainage"). The 15' Storm Sewer easement needs to be utilized for access to the Drainage Reserve for maintenance, and shall be labelled as such.**
- F. The Applicant shall submit a guarantee for the paving of the Court.
- G. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- H. The **County Fire Department** needs to comment on the plat's street name. **The street should be renamed, as Jonquil Ct. Fire hydrants are required between Lots 4 and 5, and between lots 9 and 10.**
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/4. SUB2001-62 – One-Step Final Plat of MANNIS ADDITION, located on the east side of 327th Street West and south of Pawnee.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the **Health Department** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. **Standard soil testing is required.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.

- C. **County Engineering** needs to comment on the status of the applicant's drainage plan. **There appears to be terraces and drainage structures on this site. The Applicant shall coordinate the removal or modification of terraces with NRCS. A Master Drainage Plan is needed. The Drainage Plan shall reflect disposition of terraces. Drainage Reserves may be required along 327th St. West pending review of Master Drainage Plan.**
- D. Based upon the legal description shown on the plat, the site involves the land extending to the section line and consequently the 50-ft strip along the west line of the plat would be a dedication of street right-of-way for 327th St. West. Both the face of the plat and the plat's text shall denote and reference such dedication.
- E. **County Engineering** needs to comment on the access controls and the need for a joint access opening. The plat proposes one access opening per lot. **County Engineering has approved one opening per lot. The opening for Lot 1 shall be in alignment with the contingent street right-of-way. The opening for Lot 2 shall be located along the northern portion of the lot.**
- F. The plat's text should include the reference to 327th St. West in regards to access controls.
- G. The face of the plat should designate a block number or letter, as is referenced in the plat's text.
- H. On the final plat, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
- I. The signature line for the County Commissioners Chair needs to reference "Carolyn McGinn".
- J. The Applicant shall plat a 35-ft contingent street right-of-way along the north property line of Lot 1 for future connection to adjoining properties. The contingent street dedication shall be referenced in the plat's text.
- K. The Applicant is advised that if platted, the building setbacks must be 35 feet to conform with the Zoning setback standard for County section line roads.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/4. **DED2001-17 – Dedication of Access Control from Michelle M. Baker, for property located north of Maple, on the west side of Tyler Road.**

OWNER/APPLICANT:

Michelle Becker, 211 Tyler Road, Wichita, KS 67209.

PURPOSE OF DEDICATION:

This Dedication is a requirement of Lot Split No. SUB 2001-60, and is being dedicated for access control, except for one opening, along Tyler Road.

Planning Staff recommends that the Dedication be accepted.

3/7. DED2001-18 – Dedication of Access Control, from Richard and Dana Loffland, for property located between Second and Third Streets, on Hydraulic.

OWNER/APPLICANT:

Richard and Dana Loffland, 2843 N. Edwards, Wichita, KS 67204

PURPOSE OF DEDICATION:

This Dedication is a requirement of Zoning Case No. ZON 2001-25, and is being dedicated for access control along Hydraulic.

Planning Staff recommends that the Dedication be accepted.

3/8. DED2001-19 – Dedication of Street Right-of-Way, from Richard and Dana Loffland, for property located between Second and Third Streets, on Hydraulic.

OWNER/APPLICANT:

Richard and Dana Loffland, 2843 N. Edwards, Wichita, KS 67204

PURPOSE OF DEDICATION:

This Dedication is a requirement of Zoning Case No. ZON 2001-25, and is being dedicated for 20 feet of street right-of-way along Hydraulic.

Planning Staff recommends that the Dedication be accepted.

3/9. DED2001-20 – Dedication of a Utility Easement from Chad and Alicia Jantz, for property located west of Webb Road, North of 69th Street North.

A complete legal description is available for public inspection at the Metropolitan Area Planning Department - Tenth Floor, City Hall, 455 North Main Street, Wichita, Kansas.

CASE NUMBER:

DED 2001-20 -- Dedication of a 10-Foot Utility Easement from Chad and Alicia Jantz, for property located west of Webb Road, north of 69th Street North.

OWNER/APPLICANT:

Chad and Alicia Jantz, 452 Prairie Creek Drive, Kechi, KS 67067

LEGAL DESCRIPTION:

The south 600 feet of the west 10 feet of the west half of the E 1/4 of the SE 1/4, Sec. 5, T26, R2E, Sedgwick County, Kansas.

This Dedication is a requirement of Building Permit No. SG B-01-00441, and is being dedicated for the construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

3/10. DED2001-21 – Dedication of a Utility Easement from John and Jane Hays, for property located west of Webb Road, North of 69th Street North.

OWNER/APPLICANT:

John and Janet Hays, 9000 E. 69th Street North, Wichita, KS 67147

LEGAL DESCRIPTION:

The south 600 feet of the east 10 feet of the east half of the west half of the south half of the SE 1/4, Sec. 5, T26, R2E, Sedgwick County, Kansas.

PURPOSE OF DEDICATION:

This Dedication is a requirement of Building Permit No. SG B-01-00441 and is being dedicated for the construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

JERRY MICHAELIS, Acting Chair, read the following zoning procedural statement, which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten

minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions, which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

I would like to remind the members of the Planning Commission that our bylaws require you to disclose any exparte contacts that you may have had regarding any of the applications on today's agenda. So I would ask you to please remember to disclose the nature of any such contacts you have had before we open the hearing on each case, and what if any impact that information may have on your opinion of the request.

4/1. **VAC2001-25 – Request to Vacate Hornecker Street and the Right-of-Way North of Lynndale, located northwest of U.S. Highway 54 and 119th Street West.**

CASE NUMBER: VAC2001-00025: Request to vacate Hornecker Drive and its ROW.

OWNER/APPLICANT: Dirk Schill

LEGAL DESCRIPTION: The property, being a tract in the SE ¼ of SEC 25, TWP 27-S, R2-W, described as commencing at a point on the east line of said SE ¼, said point being 1410 feet north of the north right-of-way line of US highway 54 (condemned in case a-38302); thence west parallel with said highway right-of-way line 1466.8 feet for a place of beginning; thence continuing west parallel with said highway right-of-way 70 feet to a point platted in Wells Acre, Sedgwick County, Kansas, as the SE corner of Lot 2, Block A; thence north parallel with the east line of said SE ¼ 235 feet to a point platted in Wells Acre, Sedgwick County, Kansas, as the NE corner of Lot 1, Block A; thence east parallel with the said highway right-of-way, 70 feet; thence south 235 feet to the place of beginning.

LOCATION: Generally located northwest of the Hornecker – Lynndale intersection.

REASON FOR REQUEST: The applicant proposes to use as part of his residence.

CURRENT ZONING: Subject property is a dedicated but undeveloped road. Properties to the south, east and west are zoned SF-5 Single Family Residential and developed residential. Property to the north is zoned is zoned SF-5 Single Family Residential and developed as Auburn Hills Golf Course.

The applicant proposes to use the Hornecker Drive and its ROW for himself. Currently this section of Hornecker resembles a tended yard. The applicant has stated that ATV (All Terrain Vehicle) riders use the unimproved road for access into the area around Auburn Hills Golf Course. The vacation would allow the applicant to control or shut off this ATV traffic. The applicant and neighbors have observed that the unimproved road has considerable drainage going through it. There have been 2 calls expressing concern over the applicant's intentions for development of this section of Hornecker in reference to the current drainage and how their property would be affected if there was grading or paving done on it. The Wells Acre Addition Plat (recorded April 14, 1969) dedicated this section of Hornecker Drive "to and for use of the public".

The vacation would not dead-end Hornecker or any other street. No properties would be denied access to existing streets by vacating this section of Hornecker. Current ownership of Lots 1 & 2, Blk A, Wells Acre Add, has these lots being split into an eastern half of Lots 1 & 2 (which the applicant owns) and a western half of Lots 1 & 2, both have direct access to Lyndale street. All roads identified on the vicinity map are dirt with no curb and gutter.

- A. **City Public Works** needs to comment on the acceptability of this vacation and if any substitute easements and/or dedications should be required, especially of water and/or sewer lines. **Public works requires dedication of a 20-ft utility easement**
- B. **Utility Representatives** need to comment on the acceptability of this vacation and any requirements. **Get with utility rep and have them show where the easement is that they need to retain.**
- C. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

D. All improvements shall be according to City Standards.

The ownership list reflects the eastern halves of Lots 1 & 2 being having one owner and the western halves of Lots 1 & 2 having a different owner. Staff recommends a Lot Split to reflect the current ownership and the subsequent reconfiguration of the lots due to current ownership.

BILL LONGNECKER " Planning staff. This is a request to vacate Hornecker Drive and its right-of-way. Its location of Hornecker as you can see on the exhibit is just north of Glendale Drive, and approximately 230' deep. The applicant proposes to use Hornecker for his own use. Zoning around this particular case is all single-family five is developed around it. This is Auburn Hills Golf Course, right here. Staff did check with the golf course folks to see if they needed any excess through here, they said they did not. The subdivision committee considered this request for vacation and they recommended approval with the noted conditions that you see in your report. In addition, Mr. Warren brought up the question, what would happen with the current setback along here, and the setback would automatically move to this side. However, it would become a current zoning setback, which would be a side interior lot setback of 6' Mr. Warner, so you were correct in your statement there. Are there any questions?"

MICHAELIS "Any questions of staff?"

WARREN "What we are doing is setting back a platted setback, and you say this happens automatically. My question is does it happen automatically or whether we have to do something to move and set aside that setback."

LONGNECKER "My understanding is that it would be automatic however because it is no longer fronting a road it would become an interior side setback, is that correct Marvin?"

KROUT "If there wasn't a platted setback along Hornecker then I would say that I think there is a provision in the code that would automatically would create that side yard setback. This does look like a platted setback so the only legal way to renovate a platted setback is to go through a vacation. I haven't really seen this before, but my suggestion that they file at the same time to vacate the setback, vacate the street. I mean it may be worthwhile; it depends on what the applicant intent is on that property. It may be worthwhile to step back a couple weeks and maybe read advertise the vacation setback if that is their intent, do it all at the same time and get it all cleaned up."

WARREN "That is what I suggested."

KROUT "Because it is platted, if it wasn't platted I don't think there is any requirement."

LONGNECKER " So we need to make that a noted condition and we need to re-advertise is what you are saying."

KROUT "We will have to re-advertise the vacation and building setback."

MICHAELIS " We need to hear from the applicant first. Are there any further questions of staff? Mr. McKay."

MCKAY "I would like for the record to show that I am the developer for the Auburn Hills Golf Course, but this is a joint city property which is the park just a portion of which the golf course is on so I have no conflict."

MICHAELIS "Okay. Any further questions of staff? Thank you Mr. Longnecker. Can we hear from the applicant please?"

DIRK SCHILL " I am applicant and owner of adjoining property, 1224 West Lynndale. Actually in reference to the vacation of the 30' setback that was apart of my initial submission that was in the record when I submitted my application. I wanted to vacate the roadway as well as the setback all in one step. That was my initial intent to do it all in one step. Currently this 70' by 235 feet is being used by ATV individuals in the area using it as access on the Auburn Hills Golf Course and kind of a lake area cow skin runs through their. Adjoining neighbors and I are a little bit worried about backing into an ATV rider at some point, injuring them or us. That is the main drive behind this."

MICHAELIS "Are there any questions of the applicant. Thank you sir."

WARREN " Is it your intent to potentially build across that setback line."

SCHILL "I think I would like to get ride of the 30' setback and reduce it to 6' you just never know what will come up."

WARREN "Would it be a real hardship for you to wait two weeks and come back, so we can do this properly and legally? We have not as a subdivision considered the vacation of that setback yet. I don't know what your intent was but I can tell you our action is not to cover that. I don't know if you want to do it now, I'd be glad to do it."

KROUT " Unless we advertise Bill did we advertise the request in the new paper as a vacation?"

LONGNECKER " It was just vacation of Hornecker Street and its right-of-way sir."

KROUT "Well after...if you would like us to take a vote, we will have to re-advertise, the State law says 20-days is the advertising time so it will actually be four weeks to the next planning commission meeting."

WARREN " Does that work a real hardship on you?"

SCHILL "No it does not force any hardship."

WARREN "This away it can be done in one step."

SCHILL "One step is what I want."

MICHAELIS "Is there anyone else wishing to speak on this item?"

MOTION: I move that this item be deferred until four weeks from today to re-advertise to vacate the roadway as well as the setback all in one step.

WARREN moved, **GAROFALO** seconded the motion, and it carried unanimously (13-0)

4/2. **VAC2001-26 – Request to Vacate a utility Easement, located southeast of U.S. Highway 54 and Maize Road intersection.**

CASE NUMBER: **VAC2001-00026:** Request to vacate a 20-ft x 20-ft utility easement.

OWNER/APPLICANT: Mid-America Ag Network, Inc

AGENT: Bill Noland

LEGAL DESCRIPTION: A portion of land located in Lot 1, Mid-America Ag Network Addition to Wichita, Sedgwick County, Kansas, being more particularly described as follows: Commencing at the southwest corner of said Lot 1: thence north 88 degrees 04' 13" east along the south line of said Lot 1 a distance of 70-ft to the point of beginning of the portion of land to be described; thence north 01 degrees 34' 41" west leaving said south lot line a distance of 20-ft; thence north 88 degrees 04' 13" east a distance of 20-ft; thence south 01 degrees 34' 41" east a distance of 20-ft to a point on the south line of said Lot 1; thence south 88 degrees 04' 13" west along said south line a distance of 20-ft to the point of beginning.

LOCATION: Generally located southeast of the Maize Rd – US 54 intersection.

REASON FOR REQUEST: The applicant proposes to build a telecommunication equipment shelter.

CURRENT ZONING: Subject property is zoned LC Limited Commercial. Properties to the north and east are zoned LC Limited Commercial and developed. Property to the south is zoned SF-5 Single Family Residential and developed. Property to the west is zoned LI Limited Industrial and developed.

The applicant proposes to vacate the 20-ft x 20-ft utility easement and install a Verizon equipment shelter. Verizon is proposing to locate on the existing tower and the equipment shelter will house their equipment. The Wireless Ordinance encourages co-location of wireless equipment on existing towers. The applicant has submitted a site plan showing the location of the proposed equipment shelter and has superimposed (hatched area) the approximate location of the 20-ft x 20-ft easement. The Mid-America Ag Network Addition Plat was recorded 06-17-91.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - (1) That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time June 14, 2001, which was at least 20 days prior to this public hearing.
 - (2) That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
 - (3) In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement described in the petition should be approved subject to the following conditions:
 - (1) Guarantee the relocation of the sanitary sewer easement and line, which currently provides service north of this site.
 - (2) Provide a temporary easement until the existing sewer line and easement are relocated.
 - (3) KG&E has an underground line on the south side of property; retain easement, which was dedicated by separate instrument.
 - (4) Dedicate a 20-ft utility easement for the new line.
 - (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (6) All improvements shall be according to current City Standards.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Guarantee the relocation of the sanitary sewer easement and line.
2. Provide a temporary easement until the existing sewer line and easement are relocated.
3. KG&E has an underground line on the south side of property; retain easement, which was dedicated by a separate instrument.
4. Dedicate a 20-ft utility easement for the new sanitary sewer line.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
6. All improvements shall be according to current City Standards.

LONGNECKER "This is a request to vacate 20 x 20' ft utility easement. This shows the general location of the easement and the property, which is southeast of the Kellogg, Maize intersection. There is an aerial of the area; the property is owned by the Mid-America Ag Network. They requested to vacate at the Subdivision meeting, June 28 and the Subdivision committee recommended a vacation with the six conditions that are noted in your staff summary. Are there any questions?"

MICHAELIS "Any questions of staff. We will hear from the applicant please."

BOB HERUHY "I am with Selective Site Consultants, 13540 West 95th Street, Lenexa KS and we represent Verizon Wireless and the Mid American Ag Network who are the owner of the property and intended co-locator. We agree with the conditions and we did not learn that there were live utilities in the easement until the day of the meeting. We knew there was a drainage easement that we had anticipated and there was also a sewer stub and we were going to reroute the sewer line, put in the manhole and rededicate and additional 20 x 20 utility easement farther to the east to give us room to build the equipment compound to locate in on the towers. We will abide by those conditions and we have already started the design work on that. Any questions I will be happy to answer."

MICHAELIS "Any questions of the applicant? Is there anyone in the audience wishing to speak on this item?"

MOTION: I MOTION: I move that we recommend to the governing body that the request be approved, subject to the staffs recommendations with the six conditions noted in staff summary.

BARFIELD moved, **HENTZEN** seconded the motion and it carried unanimously (13-0)

ZONING:

5. Case No.: CON2001-00034- **Edward Ring** (owner/Applicant) request Conditional Use to permit outdoor vehicles sales from "LC" Limited Commercial at the southwest corner of 9th Street North and West Street intersection.

The east 110 feet of the north 25 feet of Lot 31 and the east 110 feet of Lots 32 & 33, Block 1, Galyardt's First Addition, Wichita, Sedgwick County, Kansas.

CASE NUMBER: CON2001-00034

APPLICANT/OWNER: Edward Ring

REQUEST: Conditional Use to allow used car sales

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: Approximately 13,750 Sq.-ft.

LOCATION: Southwest corner of 9th St - West St intersection

PROPOSED USES: Vehicle and equipment sales outdoors.

BACKGROUND: The applicant, Edward Ring, is requesting consideration and recommendation for a Conditional Use to allow used car sales on property zoned "LC" Limited Commercial. The property (approximately 13,750 square feet) is located on the southwest corner of the 9th St - West St intersection. 9th St fronts the north side of the property and West Street fronts its east side. The Unified Zoning Code requires a Conditional Use for 'vehicle and equipment sales, outside' in "LC" Limited Commercial zoning.

Currently the site is developed as Central Auto Electric, which services all electrical components on automobiles. The current business is classified as 'vehicle repair limited' and is permitted by right in "LC" Limited Commercial zoning. The applicant proposes to continue the current business, add car, and truck sales to it. The site has 3 existing entrances/exits; 1 on 9th and 2 on West Street. There is another off site entrance/exit on the west 65-ft of Lot 33 onto 9th St, which provides access to the abutting shopping strip to the south and is used by customers to the applicant's site. All work on automobiles is done in the existing building (approximately 1,536 sq-ft), which has three bays leading into the garage and an office in the north end. There is 1 canopy on the site, which the applicant proposes to use for vehicle display as well as 2 parking spaces abutting the canopy space on its east side; a total of 3 – 4 marked spaces for car sales. The required parking for this particular combination of 'vehicle and equipment sales' and 'vehicle repair, limited' is 13 spaces. The applicant has just that amount on site, with one additional space that is partially on his site.

The property to the north (across 9th St) is zoned "SF-5" Single Family Residential and is a church. The property to the south is zoned "LC" Limited Commercial and is a strip shopping center containing retail and services; TV and VCR repair, watch repair, a restaurant, pool

service, and other like businesses. "LC" Limited Commercial zoning and development is east of site (across West St) and contains free standing businesses (some residential structures that have been converted to non-residential uses); a restaurant, tax services, beauty shop and sewing service. The MAPC recommended a zoning change from "SF-5" Single Family Residential to "LC" Limited Commercial for a window tinting business in this eastern section at the 06-21-01 meeting. Property abutting the site on the west is "LC" Limited Commercial and contains parking for the strip center to the south of the site. There is "SF-5" Single Family Residential zoning and development abutting this 65-ft strip of parking and drive. There is stockade type fencing between this parking and the residences abutting it on the west.

Staff drove approximately one mile from the West Street – 9th St intersection and found two car sales lots:

(a) Advantage Edge, at 400 N West Street. This business has been open approximately 60 days. Prior to this current car sales business at 400 N West Street, the Wichita Board of Zoning Adjustments approved an exception to permit used car sales (BZA 22-90) at 400 N West Street, on 12-18-90, with specific conditions for development, to Carco Unlimited.

(b) Another car sales lot is located at located 8th & Murdock on West Street, CON-521. This case was approved by the MAPC on 5-13-99 and returned to the MAPC by the WCC for reconsideration on 6-8-99. The MAPC reconsidered and, again, approved the request on 7-29-99. The WCC denied the request on 8-24-99. On 2-9-00 the District Court of the 8th Judicial District approved the Conditional Use for a car sales lot at this location.

Besides these existing car sales lots on N West Street (BZA 22-90 & CU 521), there have been three other requests for car sales within approximately a mile of the applicant's site:

(a) CU 524, located on the northwest corner of Murdock and N West Streets, was approved by the MAPC on 6-24-99 and denied by the WCC on 7-20-99.

(b) CON2000-00022, located north of 13th Street N and west of Meridian, was denied by the MAPC on 7-13-00. The WCC returned the request to the MAPC for reconsideration on 8-8-00. The MAPC made again denied the request on 8-8-00 and the applicant decided not to protest the decision.

(c) CON2001-00020, located southeast of the Zoo Boulevard – West St intersection, was denied by the MAPC 04-05-01 and the WCC concurred with the MAPC's recommendation for denial, 05-01-01.

CASE HISTORY: Galyardt's 1st Addition was entered into record 07-08-1955.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single Family Residential	Church
EAST: "LC" Limited Commercial	Free standing businesses
SOUTH: "LC" Limited Commercial	Strip shopping centers
WEST: "LC" Limited Commercial	Parking
"SF-5" Single Family Residential	Residential

PUBLIC SERVICES: West Street is a five-lane arterial Street. 9th St is a residential collector road. The nearest intersection with traffic counts is (one block north) the Zoo Boulevard - West Street intersection. The estimated traffic volume of (ADT) trips per day at the Zoo Boulevard - West Street intersection is 8,255 ADTs on the west side, 15,820 ADTs on the north side, 17,060 ADTs on the east side and 16,735 ADTs on the south side. Water/sewer and other municipal services are provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Commercial. The current zoning of the site is "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita – Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg, established areas of similar development and areas where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be DENIED. The Comprehensive Plan does not indicate that a used car lot would be appropriate for this area. The commercial uses along this portion of 9th and West Street (with the exception of the two previously noted car lots; CON521 & BZA 22-90) do not involve the outdoor display and/or storage associated with vehicle sales. If there is any other outside storage or display occurring, it is not legal.

This recommendation is based on the following findings:

The zoning, uses and character of the neighborhood: Surrounding property is zoned "SF-5" and "LC". The character of the neighborhood is a mix of residential, office and retail. The existing businesses in the neighborhood are local retail and citywide retail in character. None of the existing businesses are permitted to have outside display and storage on the level required by a car lot. A used car sales business would be out of character with these businesses

The suitability of the subject property for the uses to which it has been restricted: The current business of electric component repair on automobiles is a permitted use in this zoning and consistent with the existing businesses in the area. Many other types of businesses are permitted in the "LC" Limited Commercial district. This site has been a gas station.

Extent to which removal of the restrictions will detrimentally affect nearby property: Outdoor storage and display of vehicles is not consistent with the type of development existing at this intersection. Approval of this request will most likely open other sites nearby for additional vehicle sales lots and other "heavier" commercial uses and the appearance of a corridor with these uses will have the effect of making nearby residential areas less desirable neighborhoods.

4. Conformance of the requested change to the adopted or recognized

Comprehensive Plan and Policies: The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Commercial. The current zoning of the site is "LC" Limited Commercial. The Wichita Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg and established areas of similar development. The proposed car sales lot does meet these criteria.

5.Impact of the proposed development on community facilities: Municipal services are available to serve this site. A car lot is typically a heavy generator of traffic. The current business, on a Saturday, would generate 6 autos per 1,000 sq.-ft.

An auto sales generates 37.5 autos per 1,000 sq-ft; a substantial increase on this site on a Saturday. There does appear to be additional traffic capacity along this segment of West St. However, the additional traffic movements close to an arterial – collector intersection could increase accidents.

If, however, the Planning Commission believes this is an appropriate use, staff recommends approval be subject to the following conditions:

- (1) In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of used cars, vans and pick up trucks. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
- (2) The applicant shall submit a revised site plan giving dimension control of display areas, vehicle circulation, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs. The location of display vehicles shall be limited to those areas specified on the revised site plan. The north entrance/exit onto West Street shall be closed. The revised site plan shall be reviewed and approved by the Planning Director, prior to the issuance of a building permit, per City Standards
- (3) The applicant shall submit landscaping plan for review and approval by the Planning Director. The landscape plan shall include grass and trees in the parkway areas along West and 9th Streets. Additional landscape area is shown on the attached sketch plan.
- (4) Parking barriers shall be installed along all perimeter boundaries adjacent to streets and abutting properties, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
- (5) No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
- (6) There shall be no use of elevated platforms for the display of vehicles.
- (7) No amplification system shall be permitted.
- (8) No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
- (9) The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
- (10) Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

BILL LONGNECKER, Planning staff "Item number 5 is a Conditional Use request, this is a request to allow used car sales on property that is zoned "LC" Limited Commercial. The property as you can see on the map is located on the southwest corner of 9th Street and the West Street intersection. Currently the property is being used for a business that can be classified as vehicle repair limited which is a permitted use by right in this zoning. Staff noted that several cases have been heard along this section of West Street. Between Zoo Boulevard and Central and Douglas. We are looking as noted we have two cases that we have car lots located on West Street. The first one if you look on page 2 is the Advantage Edge car lot at 400 N. West Street. The second one is a car sales lot located at 8th and Murdock and West Street. These both were approved by the Planning Commission and in the case of Hem which is located on page 3 as noted earlier on a similar case in this area the City Council denied the request and then the District Court approved the Conditional Use for car sales lot at that location due to some in appropriate actions by Council. Also it is noted on page 3, there are three other cases that have occurred on West Street that were denied by the City Council, and in some cases they were also denied by the Planning Commission. Most recent being item C there on page 3 Conditional Use 2001-20 which was located southeast of Zoo Boulevard -West Street intersection which is a block north of this site. The staff recommends that the application be denied and this is based on the five criteria's that are listed on page 4 and 5 on your staff report. However, if the Planning Commission believes this is an appropriate use, staff recommends approval be subject to the following conditions. One being we are looking at the closure of an existing ingress egress, which is right here. We have an existing one here and one here. We went to traffic and traffic is recommendation was not only to shut this one off but also to shut this one off here. However, the applicant does not have any direct access onto his property off 9th Street. He has a common access that also serves a strip development, which is located at the abutting property to the south and has mostly locally retailers, services including barbershops, restaurants, tax service and pool service. You have a restaurant cross corner from it up here, that is Limited Commercial, across the street you have a number of houses that have been converted to office or some type of local services, like tax services. As a matter of fact, last month you heard a case of a zoning change across the street here on West which would change the last remaining single-family residential zoning to Limited Commercial, which would make the east side of West Street from 9th Street to 8th Street all that Limited Commercial. Again, staff recommends based on the criteria that you see on page 4 and 5 denial. However looking if you find this an appropriate use for this site, staff recommends the conditions that you have listed on pages 5 and 6 for consideration, if you deem this for an appropriate site for approval."

MICHAELIS "Any questions of staff. Mr. Barfield."

BARFIELD "It is not necessarily a question but I just wanted to correct you. You stated that there were 3 applications that were on West Street. The B was not on West Street, it was close to 13th Street and Meridian."

LONGNECKER "I'm sorry, where was that Mr. Barfield?"

BARFIELD "3, the B section."

LONGNECKER "Oh yes, I was within a mile radius, you are correct. Yes sir, this case was sited with the item #C for that case so I have just added on to the previous list that was brought to your attention for that Conditional Use 2001-20. But you are correct Mr. Barfield."

WELLS "Am I reading this right, the applicants is wanting to use 3 or 4 spaces for the cars?"

LONGNECKER "Yes for right now on this exhibit the applicant would like to continue using his current business, which is limited cars for minor tune ups or any kind of electrical work. If you drive by this site, right now you will find customers with their cars either waiting for service or waiting to be picked up. The applicant would like to continue with his current service. He has designated 3 spots themselves, one under the canopy here, and two for these two slots right here. Now the applicant with these 2 slots taken off would still meet the parking requirements with a combination of these two businesses."

WELLS "Still leaving him with the four spots?"

LONGNECKER "Yes."

WELLS "How would they propose to limit to just those 4 spots?"

LONGNECKER "We would have to approve a site plan, we would get a new site plan and approve just those three spots, other than that it would be a code enforcement issue whether or not they went beyond those 3 spots."

WELLS "What is the status of the law that was approved by the court on the Murdock and West?"

LONGNECKER "As I understand, that is car sales lot."

WELLS "Which corner is it on. Or should I say I have a conflict because I have gone by and look at it and I could find a car lot out there."

LONGNECKER "I have driven by that, it is over on the southwest side, when I have driven by there I have seen few if any cars out there. It is set back away from the street also."

WARREN "Does Murdock go through West?"

LONGNECKER "Yes."

WARREN "Well it doesn't show up very good. It is there and it has cars out in front, there are about five or six cars. I went by and looked."

WELLS "Right on the corner?"

WARREN "I don't consider it a corner, it is 843 West Street, and we are looking at 9th."

LONGNECKER "Yes and it is actually set back away from West."

WARREN "It does not appear to be on a corner. That is why I asked if Murdock went through West. It appears to be on the corner."

BISHOP "I understand that the DAB considered this case the other night."

LONGNECKER "The DAB considered this case July 2, and they recommended denial unanimously "

MICHAELIS " Mr. Barfield."

BARFIELD "I guess I have a question for staff. Is it normal procedure on these types of cases when they go before the DAB that a member of the MAPD would be present to make a case for or against this application?"

MILLER "It depends on the case, at this point, whether a staff person goes is dependent upon whether a case has been assigned. This particular district has asked for all cases that have been filed in this Council member's district to go to them and the understanding is we will send them all, but we are not necessarily sending a staff person every time. We try to use our judgment when we think there will be controversy involved. In this particular one, because of the other cases during the past we thought we had a good idea of what was going to happen, so therefore we did not send anybody to this particular DAB meeting on July 2."

BARFIELD "Does the applicant have the right to be notified that this is going before the DAB Board?"

MILLER " They are sent a notice with the official notice. It is in the notice that tells them of this meeting, it also tells them of the DAB meeting."

MICHAELIS "Ms. Bishop."

BISHOP "I assume especially since we have had a lecture on this today that I need to disclose an exparte conversation that I had with two of the DAB members. I didn't know ahead of time what both the discussion and vote was at the DAB meeting."

MICHAELIS "Any further discussion?" Any further questions of staff?" We will hear from the applicant."

KEVIN COLE "I am here on behalf of Edward Ring. His wife had emergency surgery, so I will try to answer all of the questions that I can. Mr. Wells hit the nail right on the head when he was pointing out that really Mr. Ring is looking for just three slots. Not to change his business at all which is Central Auto Electric, he will continue to do that in the daily course of business. When anyone is in this type of auto repair, business, there comes a time when he does become an owner of a vehicle. He needs to be able to sell that vehicle without all the hoops to jump through, without being a dealer. The only way to have a dealer's license is to zone this property with a Conditional Use with only one or two spots, and receive the license from the State so that all of the transactions can be clean, at arms length. Mr. Ring has been in business for 20 years and this is something he has never done, and never needed to do, and now as auto repairs are becoming increasingly expensive, people are more likely to say here is the car, we can't pay for this. That has come up very recently and that is what spurred this entire process. Regarding the other car lot at 843, one of the reasons Mr. Wells could not find that, those cars are all parked inside the garage when they are not open for business. That piece of property is actually a residential house with a large garage next to it, and then a parking lot in front of it. I don't know that it is actually on the corner. That explains that one."

I guess the main thing I would like to point out is that Mr. Ring is not looking to open a car lot. He specified three places to locate the cars, and it would be a code violation if he were to go beyond that and to actually have a car lot. His sign will not change, it is Central Auto Electric, has been for some time and it will continue to be Central Auto Electric whether or not this is approved. However, with the denial and the conditions that were listed, many of the things Mr. Ring does agree with, which is actually on page 5 of the staff report. Number (1) which is in addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of used cars, vans and pick up trucks. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. As I said before he wants to continue his business, cars will not be parked on the street; they will be parked for customers to see, and only those customers. Therefore, we would want to have that business. Number (2) The closing of the egress, ingress on West Street, or 9th Street or both, would really create a hardship, especially the one on West Street, the 9th Street entrance Mr. Ring is very open to closing. Because people tend to try to avoid the stop sign and he was almost hit himself as they were zipping through his parking lot. The 9th Street entrance he would not have a problem closing that at all and going through whatever steps are necessary to take care of that. Number (3) The applicant shall submit landscaping plan for review, Mr. Ring property has been landscaped not with grass but with rocks to eliminate maintenance. We would like to continue that, we would not like to have to remove the rocks to put grass in and create a maintenance headache. He's spent a lot of money to do the landscaping sometime back when he purchased it, and he would like to keep that in place. Many other businesses do have the rock landscaping; in fact, just about every McDonalds is set up that way. We would prefer not to do that; we would however do the necessary landscape into the 9th Street if the entrance were closed. Number (4 - 10) We certainly agree with, Mr. Ring has no problem with 4-10. I believe that is all. Is there any questions?"

MICHAELIS "Mr. Barfield."

BARFIELD "Can you explain why it was not important enough for Mr. Ring himself to attend the DAB meeting to discuss this?"

COLE "This was scheduled sometime back, his wife went in for surgery and had a breast removed, so he put his priority where they needed to be. I work for Mr. Ring and have been very involved in this process and he felt comfortable with that."

KROUT "Can you tell us how the owner has, up until now, gotten rid of cars that he has ended up owning because of this?"

COLE "He has basically been the go-between the buyer and the seller; he would say, contact this person, they have this car for sale. Because he would not be able to do the title, work necessary properly, legally, to get that done. He just took a step backwards and allowed the two customers to deal with one another with no profit involved to himself. He would prefer to be able to make a profit in a situation like that and that is why this was started. Did that answer your question sir?"

KROUT "How does he identify the buyer?"

COLE "Many times he would have people contact him, being in business as long as he has, people will contact him for a inexpensive car, and he can say I know someone who has this car for sale. I worked on it; it is sitting right here. But he would have to step out of the transaction."

MICHAELIS "Mr. Garofalo."

GAROFALO "From your statement, your early statements, if we placed a condition on you that the displays would be limited to only three vehicles, you would not have any objections to that condition."

COLE "No, none whatsoever. The vehicles would only be displayed only during the day. He would be driving at least one, the other one would be parked inside, just as the other car lot does down the street for insurances purposes, it would be stored inside one of the three bays that he has. It would be very unlikely that he would have three cars at one time."

GAROFALO "So if we limited it to a maximum of three vehicles displayed for sale; would that be alright with the applicant?"

COLE "Completely acceptable."

MICHAELIS "Any further questions of the applicant?" Thank you Mr. Cole." Is there anyone else in the audience wishing to speak on this item? Mr. Barfield."

BARFIELD "When I look at this, basically I see that this application as pretty much similar to the one we had on the 5th of April. The one at Zoo Boulevard and West Street and that was in operation that I believe they sold tires, mufflers and other automotive accessories and we felt that that site was unsuitable for a car lot. I have to believe that with this being one block to the south that this is a similar situation, and having denied that one, I myself would move that we deny this one also."

MOTION: To deny application because of similar requests in that same area that have been denied.

BARFIELD moved, **BISHOP** seconded the motion.

MICHAELIS "We have a motion by Mr. Barfield and a second by Ms. Bishop to deny the application. Mr. Warren."

WARREN "I would be opposing that motion, first on the basis on what Mr. Barfield has said, there was a big difference in my opinion in the Zoo Boulevard and West Street location, because it is predominate location is really on Zoo Boulevard. So we were rezoning Zoo Boulevard in that case, which had a significant factor, his predominate location at that point was not West Street, his predominate location was Zoo Boulevard and that was the reason I voted to oppose that. I would not vote to oppose this simply for several reasons; (1) He already has the auto business here, he already has the cars out there. I don't see that he is going to do anything to deter that neighborhood beyond what it is right now. Secondly, I think we are thumbing our nose at a court action, I have given you the court decree on that, 843, and the District judge came out and said this is a commercial area, Limited Commercial, light commercial he called it. It is very suitable for automobile sales. I think you ought to go right back there, so I am going to oppose that motion."

MICHAELIS "Mr. Wells."

WELLS "Do you feel it does any good to close the 9th Street entrance and not the West Street like the applicant said."

LONGNECKER "The applicant actually has only one entrance and exit on 9th Street that goes directly into his property. The entrance and exit that is west of the one on his property is a shared entrance and exit which actually feeds the strip center that is abutting him to the south, so the 9th Street entrance and exit is the only one that he has on his property. Now it also has a stop sign here, which was mentioned. Staff felt like this gave him some control to this area, as apposed to the West Street entrance and exit that is just right off the corner of this intersection where you have traffic going from a stop light here on 13th to, I'm not sure where the next one is. Staff felt like we had more control over the 9th Street entrance and exit. It is the only one on the applicant's property. This one here actually feeds into the strip center. Again, when you are looking at car lot, typically you see some type of pipe barrier that goes around the property to make sure that the cars on that property stay on that property, I'm thinking this would actually close this off right here. So staff recommendation was to go with the controlled intersection, go with the entrance and exit that are actually on his property, close off the one that is closest to the intersection on West Street and use the one that is further down away from the intersection. This would change circulation, he would lose these two parking spaces here as he would have traffic coming in and out here and he would need some circulation to get around. However, staff feels that that applicant has possible parking, he has enough room for parking here and here to make up for the two spaces he would be losing, and therefore if he did have approval for this application he would meet the parking requirements."

WELLS "So the Number (4) parking barriers would come all the way around the west and south boundaries of the property."

LONGNECKER "Yes sir."

WELLS "That gave us no cross traffic agreement to that strip center in the back."

LONGNECKER "None that I could find on the plat sir."

MICHAELIS "Mr. Barfield"

BARFIELD "You go back to what Mr. Warren said; you know I think we have a responsibility to be consistent up here. At the time that this application at Zoo and West was denied, there was at that time in place the court case that Mr. Warren is and as I have stated previously, that site at West and Zoo Boulevard was and is at this time an automotive service facility and we still denied it. Now let's go back to 13th or the application at 13th, near Meridian. That court case was also present at that time and we denied that. That facility, that property was also operated by a gentleman that had an automotive repair facility, we denied that. Again, I think we need to be consistent. The facts of the matter are, the same logic we use to deny the facility at Zoo Boulevard and West Street is the same logic we are trying to approve and I think that is being inconsistent. I'm sorry I just can't buy it."

MICHAELIS "Mr. Johnson."

JOHNSON "So what staff is saying; there can be enough way to park two cars on the south side of this lot?"

LONGNECKER "Yes sir."

JOHNSON "I guess I can't quite figure out how you are going to get the car out of there. Because they won't have access on the south side or to the west."

LONGNECKER "I'm sorry, what was that again."

JOHNSON "Do you know what the distance is between the property line and the building?"

LONGNECKER "It appears to be approximately 25 foot. Again we recommended that he turn in a new site plan with landscaping, but if you look at the area to the east of the building, you have a nice wide area here that could accept some diagonal parking. Now I have not set down and drawn this out, Mr. Johnson, but I do believe that there is enough space based on the site plan that I got, that we can make up the two parking spaces that the applicant would lose here to allow the circulation from 9th over to West."

JOHNSON "So it looks like you are going to lose two of them in the parking lot on the north, because you are going to have to have a drive come through there to park there, so the other two cars would have to go in the north side, which would close that drive also on 9th. So in order to make that work, it looks like to me you are going to have to close two drives."

LONGNECKER "You are going to lose this one here, but we never counted it."

JOHNSON "No I'm talking about the one on the other side of the aisle."

LONGNECKER "Right here?"

JOHNSON "Yes."

LONGNECKER "You are right."

JOHNSON "What are you going to make those two up?"

LONGNECKER "Again, we will have to work on the site plan to see where we can make it up."

JOHNSON "It looks like to me, you could put them on the north side, but that would require closing two drives."

LONGNECKER "That is quite possible."

MICHAELIS "Ms. Bishop."

BISHOP "Well I am going to support the motion and one of the reasons is because of the Comprehensive Plan. As a Planning Commission, I think it behooves us to set down broad guidelines for this kind of use and then unless there is strong evidence or reason not to do so to follow this guideline and I don't believe that this proposal does. I believe that the zoning use and character of the neighborhood is not conducive to beginning used car sales and that it will have an impact on the neighborhood which is residential just directly west of here. Lastly, I would just like it known I believe that enforcement is very difficult for this type of use for where you have just limited number of spaces. I could list at least three others where there is a problem. There are lots of automobile uses that could potentially follow along with this unless, like Mr. Barfield says, we develop consistency."

WARREN "I don't want to beat this horse to death, but on this last comment we talk about consistency, this board in late 1999 did not vote once but twice to approve the car lot at 843 West Street. Twice we approved that. It had to finally go to court for that to happen, but we approved it two different times, so I think we are very consistent. The second thing I see here is that when I look at this I haven't heard of any harsh accidents that are a result of doing this. All we are doing is creating three spaces so we can have three automobiles for sale. If the business is operated successfully out of this, I don't know why we can't allow him to continue what he is doing. I want to make a substitute motion."

SUBSTITUTE MOTION: To approve this application as presented. That we delete item 1, item 2, and item 3. I don't see that there is any great change that needs to taking place on this corner, so that we can facilitate what this gentlemen is trying to do and that is to the sale of three parking stalls. I don't know that we need to make a lot of demands on him for him to accommodate and accomplish that. So my motion is to approve it, and delete items 1,2 and 3 and that we go ahead and limit him as he as agreed to the sale of 3 automobile spots, subject to the site plan, however it does not include the closure at this time. However, if he were going to go into a full-blown used automobile sales lot and to change the configuration and the structure of that, then I would say yes we should go ahead and put in some of those conditions. We don't need to put him to that expense for what he is trying to do.

MICHAELIS "Do we have a second on that motion?"

HENTZEN "I want clarification because I want to second that motion."

MICHAELIS "Okay, Mr. Hentzen."

HENTZEN "I believe the owner has suggested that they could live with closing the one on 9th Street, right, and a business of landscaping, it is landscaped pretty decent now, it has some plants and rocks and it looks good and so I don't want to impose trees as this thing calls for. Does your motion include closing the driveway on the north?"

WARREN "It didn't and I tell you why, because ultimately if this property has changed to some other use, then I think we ought to close that north drive on West Street as opposed to the drive on 9th. I think you are going to have to have two drives so that would leave him then the drive on 9th and the south opening or the approach on 9th and the south opening to remain on West Street. If we are going to close one, I can see closing the one on West."

JOHNSON "I don't think that is necessarily good for what its use is."

HENTZEN "I will second the substitute motion."

MICHAELIS "We have a substitute motion, by Mr. Warren, seconded by Mr. Hentzen, discussion on the substitute motion. Mr. Garofalo."

GAROFALO "Commissioner Warren, on eliminating, you said eliminate the whole first conditions; including any automotive service or repair work conducted shall be entirely within a building?"

WARREN "We are not going to eliminate, this man is doing a commercial electrical automotive service right now in that building, I think he's going to want to continue, he said he wants to continue doing that, I see no reason to deny him the right to do that."

MICHAELIS "Mr. Krout"

KROUT "I think the last two sentences are just explanatory, they are already required by code, taking them out doesn't mean anything. They will still be required by Central Inspection. You can take it out or leave it in, it doesn't matter."

MICHAELIS "Any further discussion on the substitute? Mr. Johnson."

JOHNSON "I guess I would like to ask the maker of the motion, the only problem I see with it, the second one had to do with the approach. It looks like to me we will have to leave the approach on West Street, but as far as the landscape requirement, the lighting and all that I don't know why we would not include that in the motion."

WARREN "You are talking about item #3?"

JOHNSON "2 and 3."

WARREN "I went out and look at it and I just don't think there is any requirement at this time for what he is trying to do with the property to make any additional expenses out there for either lighting or landscaping. It looks good. The guy is running a real good clean business. I don't know why we want to make other requirements of him."

JOHNSON "I guess I am going back to the fact that it is a Conditional Use case and I think those requirements need to be one there for me to support the motion."

WARREN "Conditional Uses after that we can set conditions in this case I think the conditions ought to be left so it won't be blown into a full blown automotive circus."

KROUT "Bill, can you back up to a photograph."

LONGNECKER "I'm sorry. There is the site right now, we are talking about the landscaping, and the landscaping is currently is a couple rocks like this and gravel. I have a better picture of it. This is across the street, the Church's landscaping, this is a restaurant across the street, they have grass and trees along them for landscaping, this is between 8th and 9th the residential structures that have been converted into Limited Commercial, or Limited Commercial Use, again this has been landscaped green. In this case here, we allowed a zoning change, we are allowing them to work up a landscape plan. They have concrete they don't have gravel. This is the parking lot that goes behind the applicant's site; there is a solid screen fence there, there is landscaping there, there's the strip center; now you are looking at the applicant's site looking north, there is the strip center's grass section. The applicant is the only guy there that does not have green space, everybody else has green space, and we have grass and trees. The applicant is the only site that currently does not have the landscaping that is required by the current ordinance. This is one reason we recommended the landscaping, was to make sure that again if you thought this site was appropriate for this type of usage or mixed usage, that the applicant would go in and upgrade his landscaping, so that he would meet what is going on at this intersection, which is ultimately meeting the landscaping requirement."

WARREN "I have a question of the applicant."

MICHAELIS "Let's continue the discussion on this first and then yes."

BARFIELD "I just want to say, I will make this very brief, but when I talk about consistency, Mr. Warren talked about the case in 1999. I was not here in 99 and I don't think he was either, but I think what we have had during the time I've been here, this is the third case we have had at this same general area. The first two were denied, and I want to say the last case we had something was brought up that was not brought up here was outside storage and that was the reason for denial on the last case that we had. The other thing was that the DAB board voted unanimously to deny this."

HENTZEN "Mr. Longnecker, your implication that the green was better landscaping than the bed of rocks with some plants; I can drive up and down that area where the parking is, I mean the right-of-way, and the grass is a foot tall, not taken care of. This place has been taken care of the way it is now, so to put the request in there that he needs to change that I don't think it is necessary."

LONGNECKER "Sir, I would point out that staff is being consistent in recommending that, when you have a Conditional Use for car lots we have consistently recommended that they meet the landscape requirement."

MICHAELIS "I need to remind the Commission we need to keep focused on what we are talking about here. We are getting side tracked. This is an individual case, it needs to be treated as an individual case, the landscaping was simply made as a recommendation and that

recommendation has been removed by the motion, so is there any other relevant discussion that we have not heard pertinent to this individual case?"

BISHOP "I guess you can judge how relevant this is, but I would like to point out directly west of this location is the Orchard Park neighborhood, 9th Street to a greater extent intersects that neighborhood and that street is a gateway to the neighborhood."

LONGNECKER "I believe the Commissioner is correct in pointing out that 9th Street is as noted in the staff report is a residential collector road. It does serve to get the residents out of the neighborhood that is directly west and onto West Street."

BISHOP "There are two schools along that road."

MICHAELIS "Mr. Warren did you want to recall the applicant? Mr. Miller."

MILLER "Could we have a restatement on the motion to make sure that we have it written down correctly?"

SUBSTITUTE MOTION: That the application be approved as submitted, subject to the following changes that we would delete the requirements that were put out by staff on items 1, 2 and 3, all other staff recommendations be accepted. That we accept the applicants guarantee that he should be limited to three automobile spaces and that we would accept a revised site plan.

MICHAELIS "Seeing no further discussion we are voting on the substitute motion."

VOTE ON MOTION: The motion carried (10-3) with (Barfield, Johnson and Bishop in opposition).

6. Other matters.

MICHAELIS "Any other matters? Mr. Johnson."

JOHNSON "I think I know that the gentleman is trying to get a dealers license but in order to get a dealers license in the State of Kansas you have to have an address with a proper zoning, and that is what triggered all of this. I guess we need to come up with a good solution to avoid all of these car lots, Mr. Krout made a suggestion that maybe we just give three parking stalls to each car repair owner."

MICHAELIS "Any other comments? Mr. McKay."

McKAY "Mr. Chairman, I'm having a problem with the fact that the DAB, is an advisory group, they are not a decision making group. I constantly sit here and listen to "the DAB voted against this and that the DAB did this" and I think that that is not a real reason for us to be turning anything down or voting for it. They are strictly an advisory board to this group, we are the governing body that makes the decisions."

MICHAELIS "I think they are an advisory board to the Council, not necessarily to this group. Your point is well made. Mr. Barfield."

BARFIELD "I just wanted to say that certainly this body has to take into consideration any opposition to these cases. The City Council takes that into consideration, the recommendation of the DAB as well as the recommendation of the MAPC."

MICHAELIS "But what Mr. McKay is saying, that they are setup as an advisory board to the Council, not to us. So it is specifically, it is not designed to report to us but the designee to report to the Council."

BISHOP "I would like to add that as long as this body only meets during business hours and it does not meet in the evenings there is the opportunity at the District Advisory Boards for average citizens to turn out when they have a notice of something that is going to have a material effect in their neighborhood and make their voices heard. I certainly think that at the very least we could do is pay some attention to that."

WARREN "I would just like to comment, this meeting group is also open to those same people, and we very courteously listen to what they have to say."

BISHOP "I grant you that, Mr. Warren, and that has been my experience observing this board a number of times. However, it is only available to those folks during business hours and it is not available to a number of them."

MICHAELIS "One thing the Chair would like to bring up just for discussion, to see what the feeling of all the Commissioners are, but is has to do with, and all of this is designed to keep time and consideration, because with the exception of today we spend some long hours up here. I am wondering how everybody feels about explaining our votes. You know we seem to do that and it seems to take a lot of time and we feel like we need to do it, but I am wondering if anybody else thinks we are gaining anything by that or are we just trying to CYA or just what are some of the other opinions. Mr. Johnson."

JOHNSON "I think as far as explaining your vote I think sometimes it helps because they're maybe something that I personally think about that the other commissions don't think about or visa-versa. Now when we get into this situation where we think we have to defend something because some other Commissioner doesn't agree with us, I think that ought to be eliminated. I don't think in an open meeting we should try to get somebody switched, when they are not going to switch, I think that wastes a lot of time. But I think it is important for certain people if they want to address why they are doing something etc, I would like to hear that."

GAROFALO "I agree with Bill on what he is saying, because there is also an official reason for doing it, many times the minutes, I don't know about all of our case, but many go before the City Council are, I think as I am told, are usually read by the Council members. I think they are interested in knowing why someone may vote for or against a motion, so I think that it is significant for them to have that information available to them in their decision making."

MICHAELIS "Mr. Marnell."

MARNELL "I think prior to voting that if someone says why they are opposing or supporting an application, I think that is appropriate. After the vote is over the speeches get a little long and boring and I would like to see those gone."

MICHAELIS "That is primarily where I am heading."

MARNELL "I thought that is what it was."

MICHAELIS "I affirmably agree that during the discussion part that it be explained, but it's the explaining again after the vote."

WARREN "I totally agree with that, I am a little concerned, whose analogy are we going to look at in terms of relevance; quite often if two people are debating that debate maybe of some interest to those who have not made up their minds. I don't think we ought to eliminate that. We may talk a while and there are differences of opinion, so to say that because you have talked twice now you need to stop. I disagree. I do agree that after the vote is taken we ought to go to the next item."

MICHAELIS "Okay, any other items?"

KROUT "1:00 p.m. is the next meeting time and it will be a long meeting."

MICHAELIS "13 Zoning cases. I will entertain a motion to adjourn."

The Metropolitan Area Planning Department unofficially adjourned at 2:45 p.m.

The Metropolitan Area Planning Department unofficially adjourned at 2:45 p.m.

State of Kansas)
Sedgwick County)^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2001.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)